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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/394,159 09/13/99 MILLER

F IL-10091

EXAMINER

IM52/0321

CINTINS, I

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ART UNIT

PAPER NUMBER

1724

DATE MAILED:

03/21/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/394,159

Applicant(s)

Miller et al.

Examiner

Ivars C. Cintins

Group Art Unit

1724



Responsive to communication(s) filed on \_\_\_\_\_

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 5, 6, 9, 11, 13-15 and 20 are rejected under 35 U.S.C. 102(a) as being anticipated by Hair et al (U.S. Patent No. 5,851,947). The reference discloses a supported aerogel of the type recited; and this is all that is required by claims 1, 5, 6, 9, 11, 13-15 and 20. Applicant should note that the term "solid phase microextraction apparatus", recited in the preamble of claims 1 and 13, does not convey any structural limitations to these claims, and therefore does not distinguish over the reference device.

Claims 1, 5, 9, 10, 13-15, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Miles et al (U.S. Patent No. 4,335,017). The reference discloses a supported gel material

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of the type recited; and this is all that is required by claims 1, 5, 9, 13, 13-15, 18 and 20. Again, Applicant should note that the term "solid phase microextraction apparatus", recited in the preamble of claims 1 and 13, does not distinguish over the reference device.

Claims 1, 3, 13-15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lev et al (U.S. Patent No. 5,643,447). The reference discloses a supported gel material of the type recited; and this is all that is required by claims 1, 3, 13-15 and 20. Again, the term "solid phase microextraction apparatus", recited in the preamble of claims 1 and 13, does not distinguish over the reference device.

Claims 1, 2, 5, 6, 9, 13-15 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Zare et al (U.S. Patent No. 6,136,187). The reference discloses a supported gel material of the type recited; and this is all that is required by claims 1, 3, 13-15 and 20. Again, the term "solid phase microextraction apparatus", recited in the preamble of claims 1 and 13, does not distinguish over the reference device.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 103 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 12, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hair et al, Miles et al, Lev et al or Zare et al. Each of the references discloses the claimed invention with the exception of the number of layers of material employed (claims 4 and 16), the shape of the support structure (claims 12 and 19), and the manner in which the layer is applied to the support (claim 17). However, the exact number of layers employed, the shape of the support, and the technique used to contact the support and coating material are not seen to materially affect the overall results of the reference system, or to produce any new and unexpected results; and are therefore deemed to be obvious matters of choice, which are insufficient to patentably distinguish the claims.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lev et al in view of Zare et al. The primary reference discloses the claimed invention with the exception of the presence of particles in the film. Zare et al discloses xerogel (see col. 2, line 58) particles of different types (col. 3, lines 36-39). It would have been obvious to one of ordinary

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skill in the art at the time the invention was made to incorporate the particles of Zare et al into the material of Lev et al, in order to obtain the properties associated with these secondary reference particles for the product of the primary reference.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lev et al and Zare et al as applied above, and further in view of Miles et al. The modified primary reference discloses the claimed invention with the exception of the use of both xerogel and aerogel materials together. Miles et al teaches using such materials together (see col. 9, lines 25-27; and col. 10, lines 17-18); and it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the particles of Miles et al into the material of the modified primary reference, in order to obtain the properties associated with these secondary reference materials for the product of the modified primary reference.

Fawliszyn (U.S. Patent No. 5,691,206) discloses a similar solid phase microextraction apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can

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normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

The fax phone numbers for this art unit are: (703) 305-3599 for "Official" faxes after Final Rejection; (703) 305-7718 for all other "Official" faxes; and (703) 305-3602 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Ivars Cintins*  
**Ivars C. Cintins**  
**Primary Examiner**  
**Art Unit 1724**

I. Cintins  
March 19, 2001